

came due, the very object of the deed might have been defeated. He would not have obtained such a credit, as could have been used by him, as a capital with which to prosecute his business. The mortgaged property might have been sold, or the sureties be forced, at once, to pay, when by postponing the payment, under the assurance of the guaranty, until the 1st of October, 1830, *Thomas Clagett's* business, even if he should fail, might be so wound up as to produce no embarrassment, nor result in loss to any one. For, in general, where a party undertakes to do any act within, or upon the expiration of a limited time, he cannot be sued and charged with a breach of his agreement before the lapse of the specified time; unless he has himself previously rendered the performance of his contract absolutely impossible. (r) The limitation of the amount of the credit to \$10,000, also shews it to have been the true meaning of the parties, that *Salmon*, on his part, undertook and agreed to give credit to *Thomas Clagett* to that amount, in the manner described, until the 1st of October, 1830.

Much stress has been laid upon the fact, that the notes given by *Thomas Clagett* and some others of the grantors, fell due long before the 1st of October, 1830, and that *Salmon* being then unable to pay, he must then be considered as entitled to indemnity by a foreclosure of the mortgage. But that very circumstance shews, that it could not have been their intention to subject them properly to a foreclosure of their mortgage immediately that those notes fell due; because the express object, in so pledging their property, was to sustain *Thomas Clagett's* credit to a period far beyond that time. I am, therefore, of opinion, that the mortgage could not have been foreclosed before the 1st of October, 1830; and consequently, the stipulation in the agreement, that it should not be foreclosed until two years after the 26th of May, 1828, cannot be considered as an enlargement of the time of payment to the prejudice of these sureties, who could not be called on for payment before the mortgage credit had expired.

The defendants have further insisted, that the deed of the 17th of May, 1828, by which *Thomas Clagett* made an assignment of his goods for the benefit of his creditors, gave to *Salmon* a security for the payment of the debt covered by the mortgage, which he was bound to make available to its full extent; or to hold it for the benefit of the sureties of *Thomas Clagett*.